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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,164	03/02/2004	Eiji Kato	FY.51039US1A	3401
20995 7590 09/10/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER PHAN, HAU VAN	
			ART UNIT 3618	PAPER NUMBER
			NOTIFICATION DATE 09/10/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/791,164

Applicant(s)

KATO ET AL.

Examiner

Hau V Phan

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-10 and 12-38 is/are pending in the application.
- 4a) Of the above claim(s) 22-30, 33, 35 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 6, 8-10 and 12-21 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 31, 32, 34, 37 and 38 is/are rejected.
- 7) ☒ Claim(s) 2 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/2/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment

1. The amendment filed on 7/9/2007 has been considered.
2. The request for continues of examination filed on 7/9/2007 has been entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 31-32 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Mizuta et al. (5,086,858).**

Regarding claim 31, Mizuta et al. disclose an off-road vehicle comprising a frame, a plurality of wheels arranged to support the frame, at least one seat (6) supported by the frame, an internal combustion engine (8) powering at least one of the wheels, and an air intake system arranged to supply air to the engine. The air intake system comprises an air cleaner (25) configured to filter the air. The seat being disposed in a fore to aft direction on the vehicle such that the air cleaner lies forward of the seat and at least a portion of the engine lies behind the seat (see figure 3).

Regarding claim 32, Mizuta et al. disclose the air intake system delivers supply air to at least one combustion chamber of the engine.

Regarding claim 37, Mizuta et al. disclose at least a portion of one combustion chamber of the engine, which is positioned rearwardly of the seat.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1, 3, 5, 34, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuta et al. (5,086,858) in view of Wagner et al. (6,729,830).**

Mizuta et al. in figures 1-5, disclose an off-road vehicle comprising a frame, a plurality of wheels (2, 3) arranged to support the frame, an internal combustion engine (8) having a crankshaft (18) configured to rotate. Mizuta et al. also disclose an air intake system having intake duct (26 or 23) arranged to supply air to a belt case of the engine for combustion at a location above an uppermost surface of the wheels (Notice the belt case is a unit that belonging to the engine). The air intake system has an air inlet through (32), which ambient air enters the intake system. The air inlet positioned higher than an uppermost surface of the wheels, and the air intake duct extending rearwardly to the engine, at least a portion of the air intake duct being positioned lower than the uppermost surface of the wheels. Mizuta et al. fail to show first and second seats and the engine located between the first and second seats.

Wagner et al. in figure 1-5, teaches a wheeled work machine comprising an operator platform (26) having first and second seats. Wagner et al. also disclose an engine (24), which is located between the first and the second seats. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the off-road vehicle of Mizuta et al. with the wheeled work machine having first and second seats as taught by Wagner et al. in order to have a ability to carry more than one person to a work site. The intake duct will be positioned between the first and second seats, when combined with the teaching from Wagner et al. to provide more room for a cargo bed.

Regarding claim 2, Mizuta et al. disclose a seat (6) that defines a surface onto which a driver or passenger of the vehicle sits. The seat surface positioned higher than the wheels and the outlet opening being positioned at an elevation close to an elevation of the seat surface.

Regarding claim 34, Mizuta et al. disclose the air intake system delivers supply air to at least one combustion chamber of the engine.

Allowable Subject Matter

7. Claims 2 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 6, 8-10, 12-21 are allowed.

Response to Arguments

9. Applicant's arguments with respect to claims 1-6, 8-10, 12-21, 31-32, 34, 37-38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 571-272-6696. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hau V Phan
Primary Examiner
Art Unit 3618

Hau Phan
8/28/07